



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

HARVARD LAW REVIEW

VOL. XXIII.

1909-1910

CAMBRIDGE, MASS.
THE HARVARD LAW REVIEW ASSOCIATION

1910

Copyright, 1909, 1910,
BY THE HARVARD LAW REVIEW ASSOCIATION

THE UNIVERSITY PRESS, CAMBRIDGE, U.S.A.

TABLE OF CONTENTS.

ARTICLES.

	PAGE
AN AMBIGUITY IN THE NEGOTIABLE INSTRUMENTS LAW. <i>Samuel Williston</i>	603
CONCEALMENT OF ASSETS IN BANKRUPTCY CASES. <i>Lee M. Friedman</i>	30
CONFLICT OF LAWS AND THE ENFORCEMENT OF THE STATUTORY LIABILITY OF STOCKHOLDERS IN A FOREIGN CORPORATION. <i>Edwin H. Abbot, Jr.</i>	37
CRIMINAL CONSPIRACIES IN RESTRAINT OF TRADE AT COMMON LAW. <i>Arthur M. Allen</i>	531
EXECUTED ULTRA VIRES TRANSACTIONS. <i>Edward H. Warren</i>	495
FEDERAL CONTROL OF INTERSTATE COMMERCE. <i>George W. Wickersham</i>	241
FREEDOM OF PUBLIC DISCUSSION. <i>Van Vechten Veeder</i>	413
GERMAN CONSTITUTIONAL LAW IN ITS RELATION TO THE AMERICAN CON- STITUTION. <i>Otto Gierke</i>	273
ILLEGALITY AS AN EXCUSE FOR THE REFUSAL OF PUBLIC SERVICE. <i>Bruce Wyman</i>	577
IS THE FEDERAL CORPORATION TAX AN INTERFERENCE WITH THE SOV- EREIGNTY OF THE STATES? <i>John S. Sheppard, Jr.</i>	380
IS THE FIFTEENTH AMENDMENT VOID? <i>Arthur W. Machen, Jr.</i>	169
JAMES BARR AMES. <i>Charles W. Eliot</i>	321
JAMES BARR AMES — HIS LIFE AND CHARACTER. <i>Joseph H. Beale</i>	325
JAMES BARR AMES — HIS PERSONAL INFLUENCE. <i>Julian W. Mack</i>	336
JAMES BARR AMES — HIS SERVICES TO LEGAL EDUCATION. <i>Samuel Williston</i>	330
MISTAKE OF FACT AS A GROUND FOR AFFIRMATIVE EQUITABLE RELIEF. <i>Edwin H. Abbot, Jr.</i>	608
NULLIFICATION BY INDIRECTION. <i>James M. Beck</i>	441
OFFERS CALLING FOR A CONSIDERATION OTHER THAN A COUNTER PROMISE. <i>Clarence D. Ashley</i>	159
STATE AND FEDERAL CONTROL OF CORPORATIONS. <i>Frederick H. Cooke</i>	456
THE FEDERAL ANTI-TRUST ACT. <i>Robert L. Raymond</i>	353
THE FORCE AND EFFECT OF THE ORDERS OF THE INTERSTATE COMMERCE COMMISSION. <i>H. T. Newcomb</i>	12
THE INHERENT LIMITATION OF THE PUBLIC SERVICE DUTY TO PARTICULAR CLASSES. <i>Bruce Wyman</i>	339
THE JURORS AND THE JUDGE. <i>George W. Warvelle</i>	123
THE JUVENILE COURT. <i>Julian W. Mack</i>	104
THE LIABILITY OF AN UNDISCLOSED PRINCIPAL. <i>Floyd R. Mechem</i>	513, 590
WHAT LAW GOVERNS THE VALIDITY OF A CONTRACT. I. THE ORIGIN AND HISTORY OF THE DOCTRINE. II. THE PRESENT CONDITION OF THE AUTHORITIES. III. THEORETICAL AND PRACTICAL CRITICISMS OF THE AUTHORITIES. <i>Joseph H. Beale</i>	I, 79, 194, 260

INDEX-DIGEST

References in heavy-faced type are to **NOTES**; in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

A

ACCOUNT.

Duty to account: Contract by defendant to pay plaintiff royalty equivalent to certain per cent of net profits of his business, as basis for an accounting. 304
What fiduciary relation necessary. 304

Equitable remedies upon obligation to account: Mortgagor's right to an account for rents and profits received by mortgagee in possession. 301, 312

Bills of equitable assumpsit: Promissory notes as basis for account stated. 144

ADMIRALTY.

See also *Salvage*.

Contracts: Priority of mortgagee's claim over lien of materialman for goods supplied on mortgagor's credit. 144

Torts: Order of priority of liens arising from successive torts. 60

ADMISSIONS.

By parties and privies: Admissions of husband joined for conformity are not receivable against wife. 642

By predecessor in title, when ownership, not possession, is in issue. 397, 403

Identity of interest: general discussion of doctrine. 397, 403

ADVERSE POSSESSION.

What constitutes: Constructive adverse possession under deed actually passing less than it purports to. 56, 60

Requirements for constructive adverse possession. 56, 60

Who may gain title by adverse possession: Grantee of adjacent land under deed purporting to include land in question, by constructive possession. 56, 60

When one state can gain it against another. 555, 561

Against whom title may be gained: Effect of conflicting claims by two sovereigns. 555, 561

AGENCY.

Creation of agency: Appointment by infant: void or voidable. 145

Scope of agent's authority: Extent of authority: agent of undisclosed principal governed by. 597-602

Implied authority of national convention of political party to borrow money. 313

Principal's rights against agent: Liability of agent for refunding money due third persons. 638

Liability of bank for default of sub-agent in collecting. 639

Undisclosed principal's rights and liabilities with respect to third persons: Election of remedy against agent or principal: four theories. 590-602

Election of remedy against agent or principal: what constitutes, before discovery of principal. 590-593

Election of remedy against agent or principal: what constitutes, after discovery of principal. 593-602

On what grounds the principal can be held when discovered. 513-530

When discovered, undisclosed principal can be held on simple contract but not on contract under seal or negotiable paper. 513-530

Principal's liability to third persons in tort: Basis of carrier's liability for acts done by sleeping-car porter. 400

Charitable corporations: liability for negligence of agents. 61

Negligent injury by servant engaged in gratuitous service to recipient of service. 61

References in heavy-faced type are to **NOTES**; in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

Particular classes of torts: slander by agent.	304
Agent's liability to third persons:	
Promissory note signed as agent without express denial of personal liability, when ordinary interpretation of instrument would show intention that principal alone should be bound.	60
Warranty of authority by agent after insanity of principal.	478
Whether treasurer of political party can be sued for money borrowed by national convention.	313

ALIENS.

Who are "free white persons" within federal naturalization laws.	561
--	-----

ATTACHMENT.

Cars engaged in interstate commerce: whether attachable under state statute.	642
Effect of levy by mortgagee on mortgaged property.	639

ATTORNEYS.

Relation between attorney and client: Office copy of will privileged after testator's death.	650
Warranty of authority by attorney after insanity of client.	478

B

BAIL.

Contract to indemnify bail as a criminal conspiracy.	560, 565
--	----------

BANKRUPTCY.

National bankruptcy laws: Act of 1898: Right of bankrupt to refuse to submit to examination before adjudication.	221
Prosecutions under Act of 1898 for concealment of assets: in general.	30-36
Prosecutions under Act of 1898 for concealment of assets: whether court should be satisfied of bankrupt's guilt beyond a reasonable doubt.	32-36, 306

Involuntary proceedings: Effect of becoming a "farmer," between time of contracting debts scheduled in petition and of committing act of bankruptcy, under Act of 1898.	393, 399
--	----------

Examination of receiver before adjudication.	221
--	-----

Joining additional creditors in petition more than four months after act of bankruptcy.	479
---	-----

Time as of which debtor's exempt or non-exempt character is determined.	393, 399
---	----------

Whether creditor can avoid requirement of three or more petitioning creditors, by assigning parts of his claim to separate persons for the express purpose of qualifying them as petitioning creditors.	296, 306
---	----------

Who may file petitions under Act of 1898.	296, 306
---	----------

Preferences: Advancement by a third person in aid of preference.	562
---	-----

Delivery of chattels according to contract already performed by the other party.	399
--	-----

Lien on exempt property: whether lost by voluntary relinquishment under mistaken belief that its acquisition was a preference.	305
--	-----

Rights and duties of bankrupt:

Refusal to submit to examination before adjudication.	221
---	-----

Rights and duties of trustee:

Set-off in favor of bondholders against amount due on unpaid stock subscriptions.	563
---	-----

Property passing to trustee:

Leasehold interests.	61
Partnership assets on bankruptcy of only surviving partner.	639
Seat in stock exchange and claims due on floor transactions.	562

Provable claims:

Contingent claims: in general.	636, 639
Recovery on judgment for alimony barred by discharge.	146
Right of secured creditor to marshal the security against interest accruing after date of bankruptcy up to date of liquidation of security.	219, 221
Rights of secured creditor when security is less than debt.	219, 221
Secured creditor: effect of proving for entire claim under mistaken belief that his security was void as a preference.	305
Set-off not allowed against amount	

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

- due on unpaid stock subscriptions. 563
- Priority of claims:** Right of original owner of converted shares of stock to stock of the same kind found in bankrupt's possession. 306
- Whether mere receipt of uncashed check from bankrupt company in payment of interest on debentures prevents recipient from ranking as a secured creditor. 221
- Exemptions:** Lien on exempt property: whether lost by voluntary relinquishment under mistaken belief that its acquisition was a preference. 305
- Time as of which debtor's exempt or non-exempt character is determined. 393, 399
- Discharge:** Effect of obtaining property by false statement in writing made more than four months before bankruptcy proceedings. 305
- Effect upon obligations of bankrupt as lessee. 61
- Proving claim as bar to subsequent action for fraud. 145
- BANKS AND BANKING.**
- Collections:** Liability for default of sub-collecting agent. 639
- BILLS AND NOTES.**
- Negotiability:** Certainty in amount: attorney's fees. 307
- Anomalous indorser:** Liability at common law and under Negotiable Instruments Law. 396, 399
- Checks:** Liability to bank of drawer of stolen check signed in blank. 306
- Unendorsed checks as subject to larceny. 230
- Whether receipt of check discharges original obligation. 221
- Purchasers for value without notice:** Rights against maker of stolen note signed in blank but never delivered. 306
- Whether pledgee takes subject to equities in favor of maker. 479
- Overdue paper:** Basis for account stated. 144
- Effect of provision that note to be due at once upon default in payment of interest, on purchaser after such default: whether he takes before maturity. 146
- Maker's right to set-off against indorsee after maturity, amount of debt due him from indorser. 62
- Maker's right to set-off against indorsee after maturity, amount paid on note to indorser. 62
- When interest starts to run on instrument due on Saturday under Negotiable Instruments Law. 603-607
- Accrual of action:** Instrument falling due on Saturday under Negotiable Instruments Law. 603-607
- Defenses:** Fraud: burden of proof. 640
- Illegality: usury under Negotiable Instruments Law. 399
- Instrument itself shows signature as agent for another. 60
- Liability of collecting agent for proceeds on forged check to principal after repayment of proceeds to drawee bank. 638
- When want of delivery is defense to maker of stolen note signed in blank in hands of purchaser for value. 306
- Ultra vires* not available against a *bona fide* purchaser, where note's validity depends on facts peculiarly within knowledge of corporate officer. 567
- Statutes:** An ambiguity in the Negotiable Instruments Law. 603-607
- Negotiable Instruments Law: effect on statute making usurious note void. 399
- Negotiable Instruments Law: liability of anomalous indorser. 396, 399
- Negotiable Instruments Law: liability on promissory note signed as agent for another. 60
- Parties not named on instrument:** Undisclosed principal not liable on instrument made by agent in his own name. 513-530
- BILLS OF LADING.**
- Effect of statute making all bills of lading negotiable on "straight" bill with words "non-negotiable." 146
- BILLS OF PEACE.**
- Insurance companies seeking to have separate actions by the same insured settled in one suit in equity. 480, 640
- BOUNDARIES.**
- Effect of acquiescence by state. 555, 561
- Whether grantee of land abutting on closed street takes to center. 480

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

C

CANCELLATION OF INSTRUMENTS.

Cancellation of deed given in consideration of promise to support, upon default by grantee. 62

CARRIERS.

See also *Interstate Commerce; Public Service Companies; Railroads.*

Federal regulation: Profit allowed for granting of special privilege to shipper. 63

Duty to transport and deliver: Illegality as an excuse for refusal to perform duty. 577-589
Persons to whom carrier owes duty. 339-346

Right of express company undertaking to carry merchandise C. O. D., to refuse to carry liquor in that way. 212, 221

What must be carried: general discussion. 212, 221

Bills of lading: "Straight" bill of lading with words "not negotiable" under statute making all bills of lading negotiable: liability of carrier for delivering to consignee without asking for bill. 146

Custody and control of goods: How soon after arrival at destination liability as warehouseman begins. 307, 481

Whether failure by railroad to object to trunks being left for several days in its station, amounted to consent to the strict carrier's liability. 307

Loss or injury to goods: Goods seized by legal process under unconstitutional statute. 640

When liability as carrier changes to that of warehouseman. 481

Liens: Lien for freight charges on property shipped by third person without authority of owner. 63

Who are passengers: In general.

Personal injuries to passengers: Basis of carrier's liability for acts of sleeping-car porter. 400

Persons not passengers: Duty toward persons on premises in connection with some duty which carrier owed passenger. 342-346

Duty toward social visitors of passengers. 343-346

Sleeping cars: Liability of carrier for acts of porter. 400

To whom duty of service is owed. 351-352

CHARITIES AND TRUSTS FOR CHARITABLE USES.

See also *Legacies and Devises.*

Rights and liabilities of charitable organizations: Tort liability: negligence of agents. 61

CHattel MORTGAGES.

Requisites: A mortgagee under lien theory does not waive his mortgage by attaching mortgaged property. 639

CHoses IN ACTION.

See also *Conflict of Laws.*

What may be assigned: Provision in life insurance policy of cash surrender value. 66

Manner and effect of assignment: Recoupment against creditor's assignee. 152

Right of partial assignee against debtor. 307

Whether assignee is bound by equities against assignor in favor of parties other than obligor. 310

CIVIL LAW.

Federal character of the German government. 276-280

German constitutional law in its relation to the American constitution. 273-290

The executive, legislative, and judicial branches of the German government. 280-287

COMBINATIONS.

See *Restraint of Trade.*

CONDITIONS PRECEDENT.

Construction and operation: Condition against suicide as a warranty in insurance policy. 557, 568

CONFLICT OF LAWS.

See also *Federal Courts.*

Extent of governmental power: Power of court of equity to order abatement of foreign nuisance causing injury within its jurisdiction. 390, 400

Recognition of foreign judgments: Equitable decree as a cause of action in another state. 228
Effect at the situs of a foreign decree for conveyance of land as alimony. 228

References in heavy-faced type are to **NOTES**; in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

- Power of court to decree assessments upon foreign policy-holders in domestic corporation. 564
- Concurrent jurisdiction:** Effect of grant of concurrent jurisdiction over boundary rivers. 313
- Situs of choses of action:** Foreign bonds held by American in England. 401
- General discussion. 134, 147
- Jurisdiction of court of equity to declare trust of shares, of which non-resident holder has legal title, but corporation issuing them claims beneficial interest. 134, 147
- When courts of debtor's domicile may exercise jurisdiction without control of creditor's person: connection of state with creation of obligation. 134, 147
- Personal jurisdiction:** Foreign enforcement of statutory liability of stockholders for debts of insolvent corporation. 37-48
- Privilege from service of process of non-resident parties and witnesses coming voluntarily into the jurisdiction. 474, 487, 488
- Remedies: procedure:** Amendment of declaration after statute has run in foreign state where tort was committed. 570
- Legitimacy and adoption:** Legitimation after birth by law of domicile. 564
- Rights in property:** Property acquired by spouses after marriage. 400
- Testamentary succession:** original probate of foreign will. 467, 490
- Privity between different representatives of same decedent. 565
- Execution of power:** Will executing power: sufficiency determined by what law. 222
- Obligations ex delicto: creation and enforcement:** Right to sue for death by wrongful act of ancillary administrator appointed solely for purpose of bringing suit in a particular jurisdiction. 564
- Making and validity of contracts:** Criticism of view that validity is determined by law intended by parties. 5-10, 260-266
- Criticism of view that validity is determined by law of place of performance. 267-270
- Law governing interpretation. 563
- Theoretical and practical advantages of view that validity is determined by the *lex loci contractus*. 270-272
- What law governs validity: history and origin of doctrine. 4-11
- What law governs validity: in general. 1-11
- What law governs validity: state of the authorities. 79-103, 194-208
- Effect and performance of contracts:** What law governs interpretation. 563
- CONSIDERATION.**
- Failure of consideration:** state prohibition of liquor selling as affecting rent of premises leased for occupation "as a saloon and not otherwise." 229
- What constitutes the consideration in particular classes of cases:** Hardship resulting from partial performance of unilateral contract being insufficient consideration to prevent revocation of offer. 159-168
- Contracts by estoppel without consideration:** Act of acceptance of offer for unilateral contract partly completed: whether basis for estoppel. 166-168
- CONSPIRACY.**
- See also *Unfair Competition*.
- Criminal liability:** Combinations in restraint of trade. 531-548
- Contract to indemnify bail. 560, 565
- CONSTITUTIONAL LAW.**
- See also *Interstate Commerce; Police Power; Taxation*.
- Nature and development of constitutional government:** German constitutional law in its relation to the American constitution. 273-290
- Making and changing constitutions:** How the constitution may be amended. 170-176
- Lapse of time no bar to questioning validity of Fifteenth Amendment. 189-191
- Proposed income tax amendment to the Constitution. 49
- Validity of the Fifteenth Amendment. 169-193
- Whether the Fifteenth Amendment is void as depriving certain states of their right of equal suffrage in the Senate. 169-193
- Separation of powers:** Legislative

References in heavy-faced type are to **NOTES**; in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

- and judicial powers of commissions for fixing rates. 481
 Power of judiciary to inquire into motive of Congress in adopting a statute within its constitutional power. 441-455
Powers of Congress: taxation:
 Effect as limiting state police power. 465, 487
 Proposed income-tax amendment to the Constitution 49
 Validity of tax on state corporations. 380-387
Powers of Congress: implied powers: Power over federal corporations. 456-458
 Power over state corporation. 459-462
Powers of the judiciary: Temporary injunction against enforcement of railroad rates fixed by state commission. 481
 To control executive officers and members of the legislature by mandamus. 633, 645
 To inquire into motive of Congress in adopting a statute within its constitutional power. 441-455
Ex post facto and retroactive laws: Repeal of statute giving right of action. 565
Impairment of the obligation of contracts: Effect of contract by municipal corporation not to reduce rates of public service company. 388, 407
Due process of law: Statutory commitment of defendants acquitted of crime because of insanity. 63
 Validity of federal statute imposing penalties for disobeying orders of interstate commerce commission which have not received judicial sanction. 22-29
Vested rights: Repeal of statute giving right of action. 565
Enforcement of judgments: Validity at the situs of foreign decree for conveyance of land. 228
Personal rights: civil, political, and religious: Compulsory incorporation of banks. 629, 646
 Negroes as citizens. 176-193
 Requiring incorporation as a condition to doing a banking business. 292, 312
 Testimony given at former trial: whether admissible. 310
Privileges and immunities: class legislation: Validity of foreign corporation tax as applied to a corporation which had complied with certain statutory provisions for the privilege of doing business. 549, 565
CONSTRUCTIVE TRUSTS.
Misconduct by non-fiduciaries: Right of owner of stock converted by bankrupt to stock of same kind found in the latter's possession. 306
Liability of innocent parties: Payment in anticipation of a non-existing legal liability. 229
 whether *bond fide* assignee of constructive trustee of chose in action is bound by trust. 310
CONTEMPT.
Acts and conduct constituting contempt: Marriage by ward of court without its consent. 222
CONTRACTS.
 See also *Consideration; Offer and Acceptance.*
 Assignment of contracts, see *Choses in Action.*
 What law governs, see *Conflict of Laws.*
Contracts under seal: Undisclosed principal cannot be held on such contract made in agent's name. 513-530
Construction of contracts: what law governs. 563
Defenses: impossibility: Refusal by wife to sign conveyance of homestead as required by statute: whether a defense to contract to convey by husband. 65
CONTRIBUTORY NEGLIGENCE.
Imputed negligence: Negligence of beneficiary in action for causing death. 299, 308
 Negligence of father affecting recovery in action for causing death brought by father as administrator, he being also sole beneficiary. 299, 308
 Negligence of wife in action by husband for loss of wife's services. 299, 308
CORPORATIONS.
 See also *Public Service Companies.*
Distinction between a corporation and its members: Corporations as "combinations" under the Sherman Act. 366-370, 376-377
 Right of one corporation to prove a claim against a bankrupt corporation composed of the same individuals. 216, 222

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

- When law and equity will disregard the separate personality of a corporation. 216, 222
- Citizenship of corporation:** Comparative advantages of state and federal incorporation. 463-464
- Validity of federal tax upon corporation created by state. 380-387
- Capital, stock, and dividends:** Whether dividends on preferred stock are limited to amount of preference. 223
- Corporations de facto:** Collateral attack: when corporation merely conduit of title. 308
- Collateral attack: when no compliance with statutory requirement of special certificate from state officer. 481
- Collateral attack: when no valid law under which there might have been incorporation. 308
- Replevin of goods sold to corporation not colorably organized. 481
- Promoters:** Effect of corporation's assent to fraudulent sale. 566
- Fiduciary relation: effect of assent of stockholders on promoter's liability to account for benefits of unfair contract made with dummy board of directors. 147
- Directors and other officers:** Amount of care required of directors. 309
- Liability to creditor for transferring all corporate assets to another corporation. 309
- Liability to stockholders for losses caused by absence upon vacations. 309
- What acts are subject to interference by stockholders. 551, 567
- Stockholders: rights incident to membership:** Inspection of corporate records: English and American rules. 641
- Right to control directors by partnership agreement. 551, 567
- Whether dividends on preferred stock are limited to amount of preference. 223
- Stockholders: individual liability to corporation and creditors:** Effect of transfer made to escape liability. 566
- Statutory liability for debts of insolvent corporation: foreign enforcement. 37-48
- Ultra vires: effect of:** Under what circumstances an individual should be allowed collateral attack. 495-512
- Ultra vires contracts: rights and liabilities of parties:** Quasi-contractual relief upon partly executed contract. 627, 641
- Validity of act depending on facts peculiarly within corporate agent's knowledge. 567
- Whether executed *ultra vires* transaction should be the foundation of rights and liabilities. 495-512
- Ultra vires: transfers of property:** Collateral attack: denied when corporation a mere conduit of title. 495-512
- Insolvency of corporation:** Receiverships, see *Receivers*.
- Foreign enforcement of statutory liability of stockholders for corporate debts. 37-48
- Set-off in favor of bondholders against amount due from them on unpaid stock subscriptions. 563
- Foreign corporations:** Liability for assessment by domestic insurance company. 564
- Power of state to tax foreign corporation which has been doing business in the state. 549, 565
- Statutory requirement that foreign corporations doing business in state file certain certificates before bringing action. 66
- COURTS.**
- See also *Federal Courts*.
- Juvenile courts: General discussion of objects and jurisdiction. 104-122
- COVENANTS RUNNING WITH THE LAND.**
- Assignee of grantee in fee bound by covenant to build and maintain. 298, 309
- What constitutes "privity of estate" when no relation of landlord and tenant. 298, 309
- CRIMINAL LAW.**
- See also *Larceny*.
- Statutory offenses:** Conviction for illegal sale made by defendant's partner without his knowledge or consent. 223
- Jurisdiction:** Libellous matter mailed from one state to another. 309
- Trial:** Admissibility of evidence obtained from illegal search of defendant's person on suspicion of another crime. 568

References in heavy-faced type are to **NOTES**; in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

Sentence: Substitution in the juvenile court of probation for imprisonment. 115-117

Former jeopardy: Conviction under municipal ordinance penalizing act forbidden by state statute. 486

D

DAMAGES.

Measure of damages: Cost of reproduction as "market value." 632, 641

Distinction between joint tortfeasors and contributors to injury as regards full individual liability to the person damaged. 406

Injury from fright accompanied by contact 224

Liability of carrier for special damage for delay in transportation, which ought to have been reasonably contemplated from the character of the freight. 223

Loss occasioned by company's delay in delivering cipher telegram. 408

Recovery by *de jure* officer against *de facto* officer for compensation while latter held the office. 571

Repairs made by landlord during term after breach of tenant's covenant to repair. 67

Consequential damages: Injury from fright accompanied by contact. 224

Liability of telegraph company for loss occasioned by delay in delivering cipher message. 408

What amounts to notice to defendant that a certain special damage will result from his breach of contract. 223

DANGEROUS PREMISES.

Liability to licensees: Liability of municipal corporation to scholar at public school. 149

DEATH BY WRONGFUL ACT.

Statutory liability in general: What personal representative can sue in foreign jurisdiction. 554, 564

Defenses to statutory liability: Foreign administrator bringing action without taking out ancillary letters of administration. 64

DECEIT.

General requisites and defenses: Refraining from suing mutual debtor on defendant's statement that debtor was solvent. 401

Particular cases: Promoters liable in action by subsequent purchasers of stock though corporation was party to the fraud. 566

Damages: Difficulty of assessing damages as ground for denying relief. 401

DEEDS.

See also *Cancellation of Instruments*.

Delivery, acknowledgment, and acceptance: Delivery to agent of grantee in escrow. 642

Construction and operation in general: whether grantee of land abutting on closed street takes to center. 480

DESCENT AND DISTRIBUTION.

See also *Executors and Administrators*.

Effect of appointment as executrix of donee of imperfect gift. 483

Partnership residuary realty descends as realty. 553, 570

Whether partial failure of charitable trust results in intestacy *pro tanto* as to legal title or merely as to beneficial interest. 649

DOMICILE.

Intention necessary to effect a change of domicile. 211, 224

Requisites for acquisition by American of domicile in Chinese treaty port. 211, 224

DOWER.

No dower right in partnership realty. 553, 570

Time as of which value of dower is computed. 53, 64

Widow's right to share in appreciation from natural or artificial causes of land in hands of heir, devisee, or alienee, until assignment of dower. 53, 64

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

E

EASEMENTS.**Nature and classes of easements:**

Right to lateral support by highway of abutting house-owner.

404

ELECTION OF REMEDIES.

Against agent or principal, see *Agency*.

ELECTIONS.

Disfranchisement: Effect of re-election after ouster.

312

EMINENT DOMAIN.

Compensation: Admissibility in evidence of cost of reproduction.

632, 641

Interest on compensation placed at condemnee's disposal pending appeal which increases award.

64

Right of abutting owner to enjoin use of railroad till compensation for injury to his property has been made.

471, 482

EQUITABLE CONVERSION.

Option to buy land exercised after vendor's death: whether heir or personal representative is entitled to purchase money.

70

Right of next of kin to surplus proceeds of land subject to an encumbrance, sold after death of owner under order of court made before his death.

482

Whether devise of land to unpaid vendor thereof, releases executor from liability for purchase price.

407

EQUITABLE ELECTION.

Application of doctrine when will of married woman gave annuity to husband out of separate estate and chattel belonging to husband to a stranger.

138, 147

EQUITABLE EXECUTION.

See *Execution*.

EQUITY.

See also *Account*; *Cancellation of Instruments*; *Equitable Conversion*; *Injunctions*; *Specific Performance*.

Jurisdiction: Abatement in purchase price of land at expense of infant, sale having been ratified by court.

473, 484

Abatement of foreign nuisance causing injury within jurisdiction of court.

390, 400

Action of account against fiduciary.

304

Administration of limited fund to

which there are claims more than sufficient to exhaust the fund.

402

Bill against two defendants, alleging that one of them was liable.

224

Bill by insurance companies to have separate actions by the same insured settled in one suit.

480, 640

Control over foreign and domestic corporations at suit of stockholder.

551, 567

Equitable execution against interest of *cestui* in spendthrift trust created by himself.

649

Mortgagor's right to an account for rents and profits received by mortgagee in possession.

301, 312

Over an infant's real estate.

473, 484

Recovery from estate of money lent to executor by equitable attachment of executor's right of reimbursement.

228

Relief against mistake of fact.

608-626

To aid collection of taxes when legal remedy inadequate.

647

To compel reconveyance of land sold under mechanic's lien proceedings when there was false return of service on owner of land.

485

To restrain enforcement of judgment by default obtained because of illness of counsel.

484

To restrain inducing third person to commit a tort.

402

To restrain passage of municipal ordinance.

470, 484

To restrain prosecution by district attorney of several defendants under state liquor law alleged to be invalid.

469, 484

To restrain publication of statement, not defamatory, but consciously false and intending to cause damage.

402

To restrain use of railroad till compensation for injury to abutting property has been made.

471, 482

Whether assignee of chose in action is bound by equities against assignor in favor of persons other than obligor.

310

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

ESCROWS.

Deeds: Delivery to agent of grantee. 642

ESTOPPEL.

See also *Consideration*.

Estoppel in pais: Misleading conduct bars recovery against an undisclosed principal. 513-530

EVIDENCE.

See also *Admissions; Parol Evidence Rule; Witnesses*.

General principles and rules of exclusion: Illegally obtained evidence: whether admissible. 568

Hearsay: in general: Declarations of deceased attesting witness that testator was of unsound mind. 409

Testimony given at former trial:

Constitutionality of doctrine as applied to criminal trials. 310

Witness in criminal case absent from jurisdiction. 310

Declarations against interest:

Basis of rule as compared with that in regard to admissions of predecessor in title. 397, 403

Opinion evidence: Cost of reproduction in proceeding to ascertain "market value." 632, 641

Proof of foreign law: Application of *lex fori* in absence of proof of law of jurisdiction governing the case. 64

EXECUTION.

Equitable execution by creditor against interest of *cestui* in spendthrift trust created by himself. 649

Equitable execution on patent rights temporarily producing no income. 150

EXECUTORS AND ADMINISTRATORS.

Appointment and tenure of office:

Effect of appointing debtor as executor. 391, 403

Effect of appointing donee of imperfect gift as executor. 483

Title: Effect of revocation of administration on title of *bona fide* purchaser of assets. 148

When executor's title vests to assets of estate. 148

Rights, powers, and duties: Extra-territorial action for death by wrongful act. 64

Liability to unpaid vendor of land to whom land itself has been devised. 407

Right to recover excess payment from creditor when estate turns out to be insolvent. 403

Right to reimbursement for expenses of unsuccessful contest. 568

Administration: Debt owed deceased by executor as assets of the estate. 391, 403

Proceedings by or against: Claim for imperfect gift by donee named as executor. 483

Judgment against one not evidence in suit against another in a different state. 565

Recovery from estate of money lent to misbehaving executor. 228

Right to recover excess payment from creditor when estate turns out to be insolvent. 403

Who may sue under a death statute in a foreign state. 554, 564

Administration bonds: Surety's liability: personal debts of insolvent executor. 391, 403

EXECUTORY DEVICES.

See *Vested, Contingent, and Future Interests*.

EXTRADITION.

Interstate extradition under the United States Constitution:

Whether governor's duty to surrender fugitive from justice is absolute 403

F

FEDERAL COURTS.

Jurisdiction and powers in general: Matters relating to probate of will. 225

Right of Illinois defendant to remove suit from Iowa state court to federal court for Iowa, under statute that such suits must be

brought in district where defendant resides. 225

Jurisdiction based on diversity of citizenship: Bill against executor that legacy be declared lapsed and be paid to the plaintiff. 225

Bill by residuary legatee that de-

References in heavy-faced type are to **NOTES** in plain type to **RECENT CASES**; and in italicized type to **ARTICLES**.

defendant executor render an account of the entire estate. 225
 Statute that suit should be brought in district where defendant resides, interpreted as an exemption which defendant may waive.

225
 Suit by citizen of Pennsylvania against New York joint stock company in name of its president, a citizen of Ohio. 148

Authority of state law: Authority of state decisions in federal courts. 139, 148, 404

Different construction of will from that placed upon it by highest state court. 139, 148

Relations of state and federal courts: Matters relating to probate of will generally left to state probate courts. 225

Powers as to unconstitutional statutes: Temporary injunction against enforcement of railroad rates fixed by state commission before judicial sanction. 481

FORMER JEOPARDY.

See *Criminal Law*

FRANCHISES.

Grant of new franchise implied by operation after old franchise had expired. 646

FRAUDULENT CONVEYANCES.

Transfers for value: Transfer by directors of all corporate assets, upon transferee's contract to pay corporate debts. 309

Rights of creditors: Liability of creditor who colludes with debtor in conveying away his assets. 401

G

GAMING.

See *Wagering Contracts*.

GENERAL AVERAGE.

Nature, cause, and manner of sacrifice: Effect of inherent vice of cargo upon the right to contribution. 483

GIFTS.

Gifts inter vivos: Imperfect gifts:

appointment of donee as executor. 483

GRAND JURY.

See *Indictment and Information*.

GUARANTY.

See *Statute of Frauds; Suretyship*.

GUARDIAN AND WARD.

Right of court of equity to imprison its ward for disobedience. 222

H

HIGHWAYS.

Rights and remedies of abutters: Easement of lateral support for buildings. 404

HISTORY OF LAW.

Jury: Jury and its development.

123-131

HOMESTEAD.

Liability of husband on contract to sell homestead, when wife refuses to join in the conveyance, under statute making such a deed void without wife's signature. 65

HUSBAND AND WIFE.

Rights of husband against wife

and in her property: Wife's acquisition of husband's interest in estate by entirety. 405

Rights and liabilities of husband as to third parties: Husband's insurable interest in life of wife by reason of relation itself. 57, 65

Privileges and disabilities of coverture: Admissions of husband joined for conformity not receivable against wife in subsequent suit. 642

Wife's separate estate: Acquisition of husband's interest in estate by entirety. 405

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

I

ILLEGAL CONTRACTS.

See also *Wagering Contracts*.

Contracts supported by an illegal or immoral consideration:

Loans given to effect a preference. 562

Contracts collaterally related to something illegal or immoral:

Fire insurance on property used in illegal business. 635, 642

Contracts against public policy:

What contracts in restraint of trade are unenforceable. 531-548

Effect of illegality: Justifies public service company in refusing to render public service. 580-589

INDICTMENT AND INFORMATION.**Finding and filing indictment:**

Effect of presence of expert accountant in grand jury room. 483

INFANTS.

Contracts and conveyances: Abatement in purchase price of land at expense of infant, sale having been ratified by court. 473, 484

Appointment of agent: whether void or voidable. 145

Recovery on *quantum meruit* for services rendered under contract by which defendant supported infant as member of his family. 226

Criminal accountability: Effect of the juvenile court. 104-122

INJUNCTIONS.

Acts restrained: Action under unenforceable agreement in restraint of trade. 69

Collection of tax on goods of another included in plaintiff's property list through a mistake of law. 226

Covenant by vendee not to build: right of vendor to mandatory injunction to compel removal of building erected by lessee of covenantor. 151

Enforcement of judgment by default obtained because of illness of counsel. 484

Foreign nuisance causing damage within jurisdiction of court. 390, 400

Inducing third person to commit a tort. 402

Passage of municipal ordinance. 470, 484

Prosecution by district attorney of several defendants under state liquor law alleged to be invalid. 469, 484

Publication of statement, not defamatory but consciously false and intended to cause damage. 402

Sale of unpatented articles with knowledge that they will be used in violation of agreement with plaintiff to buy such articles exclusively from him. 230

Use of railroad till compensation for injury to abutting property has been made. 471, 482

When acts of directors will be restrained at suit of stockholders. 551, 567

INNKEEPERS.**Duties to travelers and guests:**

Duty toward persons on the premises in connection with some duty owed by innkeeper to travelers or guests. 343-345

Right to refuse further entertainment to guests not travelers. 341-342

Who are travelers. 341-342

INSANE PERSONS.

Adjudication of insanity: Liability for partnership debts subsequently contracted. 149

Statutory commitment of defendant acquitted of crime because of insanity: whether due process of law. 63

Whether it dissolves partnership without aid of equity. 149

Insanity as excuse for non-performance of conditions: Excuse for suicide in insurance cases. 557, 568

INSURANCE.

Nature and incidents of insurance contracts: Assignability of policy with provision that insured might surrender it for cash value. 66

Insurable interest: Assignee of life insurance: whether insurable interest requisite. 65

Relationship of husband and wife of itself as constituting an insurable interest. 57, 65

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

- What constitutes an insurable interest in a life: in general. 57, 65
- Defenses of insurer:** Fire insurance on property used in illegal business. 636, 642
- Suit by assignee of policy containing provision that insured might surrender it for cash value. 66
- Construction and operation of conditions:** Express condition against suicide: how construed. 557, 568
- Pro rata* clause: operation in policies not coextensive. 227
- Construction of particular words and phrases in standard forms:** Heat and smoke from an unusually hot furnace fire as "fire." 405
- "The insured": whether applicable to mortgagee as beneficiary of policy taken out by mortgagor. 311
- Rights of insurer:** Against wrongdoer who accepts release from insured with knowledge of payment by insurer. 227
- Mutual benefit insurance:** Nature of insured's right to designate a beneficiary. 311
- Right of insured's executor to amount of certificate when illegal beneficiary designated. 311
- INTERPLEADER.**
- Bill in the nature of interpleader when fund inadequate to satisfy claims not mutually exclusive. 405
- INTERNATIONAL LAW.**
- Change of sovereignty:** Acquisition of territory by adverse possession. 555, 561
- INTERSTATE COMMERCE.**
- What constitutes interstate commerce:** Correspondence schools. 644
- Early views. 241-245
- Goods shipped from one state to another pursuant to an order taken by a drummer in the latter state. 66
- Modern conception. 247-248
- Control by Congress:** Effect of federal statutes as to forwarding and distributing cars engaged in interstate commerce upon attachments under state statute. 642
- Extent of power over state corporation. 459-462
- History and development. 241-259
- Judicial interpretation of the Sherman Anti-Trust Act. 253-257
- Proposed amendments to Act of 1887. 249-252
- Proposed federal corporation law. 257-259
- Regulation of interstate commerce by the courts pending investigation by the Interstate Commerce Commission. 569
- Control by states:** Attachment of rolling stock engaged in interstate commerce. 642
- Effect of federal statute not to be in force for one year from its passage on state statute passed during the year, in a matter over which power of Congress is only potentially exclusive. 643
- Exclusion of intrastate business of foreign corporation engaged in interstate commerce. 549, 565
- Regulation of rates of interstate ferries. 484
- Requirement that foreign corporation doing business in state file certain certificate before bringing action. 66
- Right to tax franchises of transcontinental railroad corporations. 246-247
- State taxation of telegraph company exercising federal privileges. 644
- Interstate Commerce Commission:**
- Efficiency decreased by delays caused by right of appeal from its decisions to the courts. 249-252
- Constitutionality of federal statute imposing penalties for disobeying orders of commission which have not received judicial sanction. 22-29
- Force and effect of orders of commission: in general. 12-29
- Power of commission to fix rates on principle of equalizing geographical advantages. 135, 149
- Power to regulate *pro rata* distribution of cars. 569
- Regulation of interstate commerce by the courts pending investigation by the Interstate Commerce Commission. 569
- Whether Commission has legislative or judicial powers as an adjunct to the legislative and judicial branches of the United States government. 15-22

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

Right to engage in interstate commerce: Restrictions on right by Congress as indirect method of nullifying reserved powers of states. 445-449

INTOXICATING LIQUORS.

State statute requiring giving of unreasonable notice by holders of federal internal revenue licenses. 465, 487

J

JOINT TENANCY.

Effect of conveyance "to A and B, their executors, administrators, and assigns." 214, 228

JOINT WRONGDOERS.

Distinction between joint tortfeasors and contributors to injury in regard to full individual liability to the injured person. 406

JUDGES.

See *Trial*.

JUDGMENTS.

Setting aside and vacating judgments: False return of service in mechanics' lien proceedings as ground for opening judgment. 485

Equitable relief: Default due to illness of counsel without fault of defendant. 484

False return of service in mechanics' lien proceedings. 485

Collateral attack: Distinction between direct and collateral attack. 67

Suit to quiet title to land declared to be in defendant by divorce decree. 67

Operation as a bar to other actions: Acquittal in criminal prosecution as bar to forfeiture of smuggled goods. 572

Judgment for one year's rent after two years' tenancy from year to year as bar to suit for second year's rent. 149

Foreign judgments: See under *Conflict of Laws*.

JURISDICTION.

See *Conflict of Laws*.

JURISPRUDENCE.

German constitutional law in its relation to the American Constitution. 273-290

Whether compensation must be made for injury caused by justifiable trespass. 490

JURY.

See *Law and Fact*; *Trial*.

L

LANDLORD AND TENANT.

Nature and incidents of the relation: Effect of lessee's discharge in bankruptcy. 61

Terms for years: Effect of state prohibition of liquor selling on lease for occupation "as a saloon and not otherwise." 229

Tenancies from year to year and month to month: Judgment for one year's rent after two years' occupancy as bar to suit for second year's rent. 149

Whether each year is a new lease or a prolongation of the original term. 149

Conditions and covenants in leases: Assignment between tenants in common as breach of covenant not to assign. 406

Breach of condition: effect of

license by lessor on subsequent breaches. 630, 645

Breach of condition: waiver of breach by lessor. 630, 645

Landlord's right to recover during term for repairs made after breach by tenant of covenant to repair. 67

Assignment and subletting: Assignment between tenants in common as breach of covenant not to assign. 406

Power of municipality to sublet property for private purposes. 570

Rent: state prohibition of liquor selling as affecting rent of premises leased for occupation "as a saloon and not otherwise." 229

LARCENY.

Property subject to larceny: Unendorsed check. 230

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

Grand larceny: Taking face value of unendorsed check to determine value of stolen property. 230

LATERAL SUPPORT.

See *Right of Support*.

LAW AND FACT.

Provinces of court and jury: History of jury's right to decide questions of law in criminal prosecutions. 123-131

LEGACIES AND DEVISES.

Title and rights of devisees and legatees: Dividends on specific legacy innocently transferred to the wrong person. 215, 230

Nature of legatee's interest in legacy before discovery of codicil revoking it. 215, 230

Particular instances of construction: Absolute gift followed by qualifying clauses: effect of failure of qualifying clauses. 485

Devise of land to unpaid vendor thereof. 407

Performance of condition subsequent excused by impossibility, when not primary motive of testator. 67

Void or voidable bequests and devises: Application of doctrine of equitable election. 138, 147

Payment: Deduction of amount of expense incurred in maintenance

of legacy pending settlement of estate. 71

LEGAL BIOGRAPHY.

James Barr Ames. 321-324, 325-329, 330-335, 336-338

LIBEL AND SLANDER.

Acts and words actionable: Unintentional libel. 218, 230, 486

Privileged communications: Candidates for public office: honest discussion of moral fitness. 413-440

Pleadings: irrelevant statements not privileged. 645

Criminal libel: Whether published where mailed or where received. 309

LIENS.

See also *Maritime Liens*.

Lien on goods for charges incurred by one other than the true owner. 63

LIFE ESTATES.

Absolute devise followed by modifying clause reducing gift to life estate: effect of failure of modifying clause. 485

Personalty to follow limitations of realty: heirlooms. 68

LIMITATION OF ACTIONS.

See also *Adverse Possession*.

Pleading: Amendment of declaration naming proper parties after statute has run. 570

M

MANDAMUS.

Persons subject to mandamus:

Directors of corporation refusing to stockholder access to corporate books and records. 641

Executive officers and members of the legislature. 633, 645

MARITIME LIENS.

Nature and scope: Nature of interest in vessel itself acquired by lienholder. 60

Enforcement of liens: Order of priority of liens arising from successive torts. 60

Loss of liens: Effect of mortgagee's seizing vessel on materialman's lien in regard to freight money subsequently earned. 144

MECHANICS' LIENS.

Whether judgment in mechanics' lien proceedings is *in rem*. 485

MONOPOLIES.

See *Restraint of Trade*.

MORTGAGES.

Priorities: Prior lien of mortgagee to secure present and future advances, for advances made subsequent to, but in ignorance of, an intervening encumbrance. 68

Foreclosure: Right of mortgagor to have the amount of rents and profits received by mortgagee in possession set off against the mortgage debt. 301, 312

MUNICIPAL CORPORATIONS.

Governmental powers and functions: Immediate withdrawal of public service company doing business after expiration of franchise cannot be interfered with. 646

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

Right to appropriate money for the investigation of municipal problems.	293, 312	contract not to reduce rates of public service company.	388, 407
Right to maintain bill in equity to restrain public nuisance.	645	Officers and agents: Effect of re-election after ouster.	312
Validity of ordinance penalizing act forbidden by state statute.	486	Validity of legislator's vote upon a measure which directly affects his property.	407
Municipal debts and contracts:		Whether man can act as member of Congress and as mayor of a city at the same time.	231
Liability in quasi-contract.	569	Actions by and against municipal corporations: Repeal of statute while plaintiff's action pending.	565
Municipal property: Lease for private purposes.	570	Right of city to enjoin public nuisance.	645
Liability for torts: Defective condition of school playground.	149		
Police power and regulations: Validity of ordinance penalizing act forbidden by state statute.	486		
Franchises and licenses: Effect of			

N

NATURALIZATION.

See *Aliens*.

NEGOTIABLE INSTRUMENTS.

See *Bills and Notes*.

NERVOUS SHOCK.

See *Damages*.

NUISANCE.

See also *Equity*.

Private action for public nuisance:

Abatement at suit of municipal corporation. 645

O

OFFER AND ACCEPTANCE.

Unilateral contracts: Hardship resulting from allowing revocation of offer any time before completion of act of acceptance.

159-168

Officers calling for a consideration other than a counter promise: general discussion. 159-168

P

PAROL EVIDENCE RULE.

Nature and scope of rule: General discussion of meaning and application of term 302, 312

Substantive law expressed in terms of evidence: Bills and notes: extrinsic evidence as to character of anomalous indorser. 396, 399

Contracts: parol agreement that written offer should remain open more than a reasonable time. 302, 312

Construction of documents:

Whether extrinsic evidence admissible to show document prop-

erly executed is not a will because no *animus testandi*. 573

PARTNERSHIP.

Nature of partnership: Criminal liability for sale of liquor by defendant's partner under statute forbidding such sales "either personally or by agent." 223

Partnership property: Bankruptcy of only surviving partner: whether firm assets pass to trustee. 639

Conversion of realty into personalty. 553, 570

Rights, duties, and liabilities of partners inter se: Action by

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

- trustee in liquidation of firm on note made by stranger when he was a partner. 487
- Judgment of directors of corporation cannot be controlled by a partnership agreement between two stockholders. 551, 567
- Right to compensation out of firm assets for services rendered after dissolution. 646
- Rights and remedies of creditors:**
- Against insane partner for debts contracted after adjudication of insanity. 149
- Rights of partnership and partners against third persons:**
- Criminal liability for statutory offense committed by defendant's partner without his knowledge or consent. 223
- On note made before retirement from the firm. 487
- Dissolution and winding up:** Right of partner to compensation for services rendered the receiver after dissolution. 646
- Right of third person without notice to hold member of partnership on grounds of estoppel: whether it exists when dissolution is by operation of law. 149
- PATENTS.**
- Nature of the right:** Equitable execution on patent rights. 150
- Infringement:** Injunction against sale of articles to be used with plaintiff's machines, with knowledge that such use will violate buyer's agreement to buy such articles from plaintiff alone 230
- PLEADING.**
- Amendment of declaration after limitation period. 570
- Fraud: burden of proof in negotiable instruments. 640
- PLEDGES.**
- Pledgee of note as innocent purchaser. 479
- POLICE POWER.**
- Nature and extent:** Not exercisable when an unreasonable burden on the federal power of taxation. 465, 487
- Power of states over federal corporations. 458-459
- Regulation of business and occupations:** Compulsory incorporation of banks. 629, 646
- Restricting banking business to corporations, and requiring annual contributions to a fund for the protection of depositors of insolvent banks. 292, 312
- POLITICAL PARTIES.**
- Authority of executive committee to borrow money. 313
- Liability of members for debts incurred by national convention. 313
- POSSESSION.**
- See *Adverse Possession; Title, Ownership, and Possession.*
- POST OFFICE.**
- Denial by Congress of use of post office without compliance with certain requirements, as indirect method of nullifying reserved powers of states. 447-449
- POWERS.**
- Effect of partial failure of charitable trust on power of sale. 649
- Extinguishment of power appendant by conveyance in fee before appointment. 69
- Power created in domestic will and executed in foreign will not subject to inheritance tax. 648
- Release of special powers in gross. 394, 408
- Special powers: covenant by donee to appoint. 394, 408
- Validity of power of sale which may, upon the exercise of another power, be exercisable at too remote a time. 647
- Will executing power: sufficiency determined by what law. 222
- PRESUMPTIONS.**
- Existence and effect of presumptions in particular cases:**
- Presumption that law of jurisdiction governing case is the same as the *lex fori*. 64
- PRIVILEGED COMMUNICATIONS.**
- See *Libel and Slander; Witnesses.*
- PROCESS.**
- Manner and effect of service:**
- Privilege of non-resident parties and witnesses coming voluntarily into the jurisdiction. 474, 487, 488
- PUBLIC OFFICERS.**
- Eligibility to office:** Whether acceptance of election to Congress *ipso facto* operates as a surrender of the office of mayor. 231
- Powers and duties:** Validity of municipal legislator's vote upon an ordinance directly affecting his property. 407

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

Compensation: Right of *de facto* officer to set off expenses in suit by *de iure* officer for salary 571
Liability of: Mandamus against executive officers and members of the legislature. 633, 645
PUBLIC SERVICE COMPANIES.
 See also *Carriers; Railroads; Telegraph and Telephone Companies.*
Rights and duties: Contract by telephone company to give exclusive connection to another company unenforceable as involving discrimination of service. 54, 69, 646
 Duty of telephone company to maintain switchboard connection with wires of neighboring company. 54, 69

Necessity for notice of withdrawal after expiration of franchise. 646
 Telephone companies: obligation to serve all at reasonable rates irrespective of ability to pay. 648
 The inherent limitation of the public service duty to particular classes. 339-352
 To whom duty of service is owed by water, gas, electric, and telephone companies. 346-351
Excuses for not serving: Illegality. 577-589

PURCHASERS FOR VALUE WITHOUT NOTICE.

See *Bills and Notes; Recording and Registry Laws.*

Q

QUASI-CONTRACTS.

Rights arising from mistake of fact: Payment in anticipation of a non-existing legal liability. 229
 Recovery by executor of excess payment from creditor when estate turns out to be insolvent. 403
 Recovery from estate of money lent to misbehaving executor. 228
Rights arising from mistake of law: Recovery of money paid under *ultra vires* contract. 627, 641

Recovery for benefits conferred without contract: Measure of damages when increased value less than cost of work done. 150
 Services rendered by infant under contract by which defendant took infant into his family. 226
Money paid to the use of the defendant: No recovery against a municipality where contract *intra vires* but made in an unauthorized manner. 569

R

RAILROADS.

See also *Carriers; Interstate Commerce.*

Regulation of rates: Power of courts to review rates fixed by commissions. 481
 Profit allowed for granting of special privilege to shipper. 63

REAL PROPERTY.

See *Adverse Possession; Covenants Running with the Land; Dower; Life Estates; Rule against Perpetuities; Rule in Shelley's Case; Vested, Contingent, and Future Interests.*

RECEIVERS.

Liability for tort of corporation committed before appointment. 488

RECORDING AND REGISTRY LAWS.

Notice by record: Recording of second mortgage as notice to first mortgagee in regard to future advances. 68

RELEASE.

Requisites and validity: Validity at law of release of cause of action procured by fraud. 571

RES JUDICATA.

What judgments are conclusive: Acquittal in criminal prosecution as bar to forfeiture of smuggled goods. 572

RESCISSION.

Rescission for fraud or mistake: Mistake of fact. 608-626

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

RESTRAINT OF TRADE.

Monopoly: How far criminal.

531-548

Combination by agreements as to product or prices: How far criminal.

531-548

Injunction against acting under unenforceable agreement in restraint of trade.

69

Sherman anti-trust law: Corporation holding majority stock of twenty formerly competing oil companies, each of which in turn controlled many smaller companies.

209, 231

General discussion.

353-379

Judicial interpretation.

253-257

Monopoly: meaning of the term in the act.

209, 231

Review of decisions of United States Supreme Court.

353-379

Whether reasonable agreements are within the law.

255-257

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY.

Covenantor's liability upon re-entry after breach of covenant by lessee.

151

RIGHT OF SUPPORT.

Right to lateral support by highway of abutting house-owner.

404

RIPARIAN RIGHTS.

See *Waters and Watercourses*.

RULE AGAINST PERPETUITIES.

Rule against possibility on possibility: whether applicable to equitable estates.

231, 313

Whether an otherwise too remote power of sale is an exception to the rule that a gift expressed in one limitation cannot be divided unless separable in its terms.

647

Whether vendee of land is bound by covenant to allow vendor certain rights therein whenever the latter, his heirs, or assigns, choose to exercise the option.

408

RULE IN SHELLEY'S CASE.

Application to executory trust.

488

Application to gifts of personal property.

51, 69

Distinction between deeds and wills.

313

When particular estate and remainder are not of the same quality.

488

Whether express provision in will that life tenant shall have no power to convey for longer period than his life, prevents application of rule.

313

S

SALES.

See also *Statute of Frauds*.

Time of passing title: Cash sales: waiver of condition by delivery in return for check given after banking hours.

69

Risk of loss: In executory sale of land.

476, 490

Conditional sales: Carrier's lien on goods against vendor for charges incurred by vendee.

63

Risk of loss.

151

Rights and remedies of seller: Right to contract price when buyer re-sells goods not conforming to contract.

232

Stoppage in transitu: When receipt by agent of vendee breaks transit.

142, 152

Rights and remedies of buyer: Liability for contract price when he re-sells goods not conforming to contract.

232

Title of goods subject to bill of lading: Effect of statute making all bills of lading negotiable on "straight" bill with words

"non-negotiable": interest of bona fide purchaser of bill from consignor.

146

Warranties: remedies for breach:

Mutual exclusiveness of buyer's remedies.

141, 151

SALVAGE.

Services rendered to ship in dry dock.

313

SCHOOLS AND SCHOOL DISTRICTS.

Liability to scholars for dangerous condition of premises.

149

SET-OFF AND COUNTERCLAIM.

Not available to bond holders in suit for unpaid stock subscriptions.

563

Recoupment against creditor's assignee.

152

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

SPECIFIC PERFORMANCE.

Affirmative contracts: Contracts which defendant could not enforce against plaintiff. 294, 310

Legal consequences of right of specific performance: Right of personal representative of vendor to purchase money in option to purchase. 70

Risk of loss in executory sale of land. 476, 490

Defenses: That defendant could not have enforced contract against plaintiff. 294, 310

STATES.

Effect of concurrent jurisdiction over boundary rivers. 313

Right of one state to acquire property against another by adverse possession. 555, 561

STATUTE OF FRAUDS.

Promises to answer for the debt, default or miscarriage of

another: Consideration moving directly to promisor. 136, 152

When surety's promise is within statute. 136, 152

Sales of goods, wares, and merchandise: Contract for goods to be manufactured. 489

Part performance: Parol partition of land. 489

SUBROGATION.

See *Insurance*.

SUNDAY LAWS.

Excuse for refusal of public service.

579-582

SURETYSHIP.

See also *Statute of Frauds*.

Nature of suretyship contracts:

Distinction between guaranty and informal suretyship.

136, 152

Transactions analogous to suretyship:

Presumption that anomalous indorser of note is surety for maker. 396, 399

T**TAXATION.**

General limitations on the taxing power: Federal power of taxation and state police power. 465, 487

State taxation of interstate commerce: telegraph company exercising federal privilege. 644

Particular forms of taxation:

Application of inheritance tax to execution by foreign will of power created in domestic will. 648

Federal tax on corporations created by states. 380-387

Proposed income tax amendment to the Constitution. 49

Tax on capital stock of foreign corporations. 549, 565

Where property may be taxed:

Choses in action: bonds not at owner's domicile. 401

Collection and enforcement: Jurisdiction of equity when legal remedy inadequate. 647

Tax against A on goods of B included in A's property list through mistake of law. 226

TELEGRAPH AND TELEPHONE COMPANIES.

Status of companies as engaged in public employment: Con-

tract by telephone company to give exclusive connection to another company unenforceable as involving discrimination of service. 54, 69, 646

Duty of telephone company to maintain switchboard connection with wires of neighboring company. 54, 69

Obligation to serve all at reasonable rates irrespective of ability to pay. 648

Damages for error, delay, or non-delivery: Cipher message. 408

What degree of knowledge on part of company of importance of message must be shown to recover full damages. 408

TENANCY IN COMMON.

Assignment between tenants in common of term for years as breach of covenant not to assign. 406

Whether created by conveyance "to A and B, their executors, administrators, and assigns. 214, 228

Whether parol partition of land is within statute of frauds. 489

TITLE, OWNERSHIP, AND POSSESSION.

Whether grantee of land abutting on closed street takes to center. 480

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

TORTS.

See also *Contributory Negligence; Damages; Dangerous Premises; Libel and Slander.*

In general: Distinction between joint tortfeasors and contributors to injury as regards full individual liability to the person damaged. 406

Liability at law for destroying equitable right: Liability for inducing breach of trust. 153

Interference with business or occupation: Justification: objects that may justify interference. 154

Existence of tort liability in various unusual cases: Inducing breach of equitable obligation. 153

Sale of articles with knowledge that they will be used in violation of agreement with plaintiff to buy such articles exclusively from him. 230

Defenses: Private necessity. 490

TRADE MARKS.

Protection apart from statute: Injunction asked against use of name already used by rival. 572

TRESPASS TO REALTY.

What constitutes a trespass: Compensation for trespass justified by necessity. 490

TRIAL.

Provinces of court and jury: History of jury's right to decide questions of law in criminal prosecutions. 123-131

TRUSTS.

Creation and validity: Claim of depositary against collecting bank: whether held in trust for depositor. 639

Interest of creditors in assets of corporation. 309

Tentative trusts: how and when made irrevocable. 153

Cestui's interest in the res: Right of cestui's administrator to unexpended income of spendthrift trust. 152

Powers and obligations of trustees: Effect of language of instrument of creation and intention of creator on power of heir or devisee of deceased trustee to execute the trust. 59, 70

When successor of deceased trustee can exercise trust with power annexed. 59, 70

Rights and liabilities of third parties: Liability for knowingly inducing breach of trust. 153

Spendthrift trust created by *cestui*: whether good against creditors. 649

Failure of trust: Effect of partial failure on power of sale, the exercise of which is opposed by heirs. 649

Resulting trusts: Effect of annulment of marriage on counterpresumption that land bought by husband in wife's name is an advancement and not subject to a resulting trust. 232

Effect of partial failure of charitable trust on power of sale. 649

U**UNDISCLOSED PRINCIPAL.**

See *Agency.*

UNFAIR COMPETITION.

By means unlawful as against third persons: Deceptive use of name associated with rival organization. 572

Interference with the making of

contract: Compelling member of association not to deal with plaintiff: what constitutes actionable coercion. 154

Compelling member of association not to deal with plaintiff: whether justifiable. 154

V**VENDOR AND PURCHASER.**

Rights and liabilities: Risk of loss in executory sale of land. 476, 490

VESTED, CONTINGENT, AND FUTURE INTERESTS.

See also *Legacies and Devises; Rule against Perpetuities.*

References in heavy-faced type are to NOTES; in plain type to RECENT CASES; and in italicized type to ARTICLES.

Application of rule in Shelley's Case to executory trust.	488
Future interests in personalty: nature and validity in general: heirlooms.	68
Rule against possibility on possibility extended to equitable estates.	231, 313
Rule in Wild's case.	314
Whether covenant by vendee of land that vendor, his heirs, or assigns,	

should have certain rights therein, whenever they chose to exercise the option, creates an interest too remote. 408

VOLUNTARY ASSOCIATIONS.

Authority of executive committee to borrow money.	313
Liability of treasurer for money lent to the association.	313
Name of organization: right to exclusive use.	572

W

WAGERING CONTRACTS.

Recovery of money lent for gambling. 71

WARRANTY.

Of authority by agent, see *Agency*.

WATERS AND WATERCOURSES.

Natural lakes and ponds: Division of lake-bed among abutting owners. 314

WILLS.

Execution: Attesting witnesses: whether signature amounts to a declaration that testator was of sound mind. 409
Will invalid by law of testator's domicile a good exercise of a power if valid by law of donor's domicile. 222

Probate: Effect of revocation of probate upon rights of legatees. 215, 230

Original probate of foreign will. 467, 490

Right of executor to recover costs in unsuccessful contest to probate will. 568

Construction: Absolute gift followed by qualifying clauses: effect of failure of qualifying clauses. 485
Animus testandi conclusively presumed from testator's knowledge of nature of document he signs. 573

Application of rule in Shelley's case to bequests of personal property. 51, 69

Gift of income till marriage passes absolute estate. 573

Liability of legatee for expense incurred in maintenance of legacy pending settlement of estate. 71
Rule in Wild's case. 314

Whether devise of land to unpaid vendor thereof showed intention that debt be cancelled. 407

Revocation: Attorney's copy of will inadmissible to show revocation of first will. 650

Partial revocation by act done to instrument itself. 558, 573

WITNESSES.

Privileged communications: Attorney and client: exclusion of office copy of will after testator's death. 650

Miscellaneous questions of privilege: Privilege of non-resident witness from service of process. 474, 487, 488

Impeachment: Whether ground for admitting declarations of deceased attesting witness that testator was of unsound mind. 409

BOOK REVIEWS.

	PAGE
ANSON : The Law and Custom of the Constitution. Vol. I. Parliament. Fourth edition	575
BEDWELL : A Brief History of the Middle Temple	493
BEDWELL : The Legislation of the Empire	409
BEVEN : The House of Lords on the Law of Trespass to Realty and Chil- dren as Trespassers	491
BEVEN : The Law of Employers' Liability and Workmen's Compensation. Fourth edition	237
BOWER : A Code of the Law of Actionable Defamation	233
COBBETT : Cases and Opinions on International Law. Part I. Peace. Third edition	653
COMMITTEE OF ASSOCIATION OF AMERICAN LAW SCHOOLS : Select Essays In Anglo-American Legal History. Vol. III	236
FOULKE : A Treatise on the Rules Against Perpetuities, Restraints on Alienation and Restraints on Enjoyment in Pennsylvania	317
HAIGHT AND MARSH : Questions and Answers for Bar-Examination Review	76
HALSBURY : The Laws of England. Vols. III, IV, VI, VII, VIII	315
HART : Digest of the Law of Trusts	158
JONES : A Treatise on the Law of Insolvent and Failing Corporations. . .	319
LILE, REDFIELD, WAMBAUGH, SUNDERLAND, MASON, COOLEY : Brief Mak- ing and the Use of Law Books. Second edition	239
MACHEN : A Treatise on the Federal Corporation Tax Law of 1909 . . .	652
MACOMBER : The Fixed Law of Patents	238
MAITLAND : Equity ; also the Forms of Action at Common Law	316
MAYNE : A Treatise on Damages. Eighth edition.	154
MOLL : A Treatise on the Law of Independent Contractors and Employ- ers' Liability.	652
MINOR AND WURTS : The Law of Real Property.	574
NICHOLS : The Power of Eminent Domain	319
NIMS : The Law of Unfair Business Competition	411
PAUL : Notes on Massachusetts Practice with Reference to Proceedings Before Masters and Auditors	491
PHILLIPSON : The Effect of War on Contracts and on Trading Associations in Territories of Belligerents	492
REEVES : A Treatise on the Law of Real Property	157
RICHARDS : A Treatise on the Law of Insurance in all its Branches. Third edition	650
SCOTT : The Hague Peace Conferences of 1899 and 1907	319
SEDGWICK : Elements of the Law of Damages. Second edition	75
STREET : Federal Equity Practice	73
THORNTON : A Treatise on the Federal Employers' Liability and Safety- Appliance Acts	75

	PAGE
TIFFANY : Handbook on the Law of Persons and Domestic Relations. Second edition	157
UNDERHILL : A Treatise on the Law of Landlord and Tenant.	156
WATKINS : Shippers and Carriers of Interstate Freight	652
WHITE : The Law of Personal Injuries on Railroads	155
WILLIAMS : The Law of the Universities	493
WILLISTON : The Law Governing Sales of Goods at Common Law and Under the Uniform Sales Act	71
WOODMAN : A Treatise on the Law of Trustees in Bankruptcy	72